

FINAL COPY

Proposed Constitutional Amendment
To Be Voted on at the November 7, 2006, Election

PROPOSED CONSTITUTIONAL AMENDMENT

Article IV. Legislature.
Section 14. Powers of the General Assembly; limitations.

BALLOT QUESTION NUMBER 2

Shall Section 14 of Article IV of the Constitution of Virginia be amended by deleting the provision that prohibits the incorporation of churches, a provision that was ruled to be unconstitutional and therefore now is obsolete?

EXPLANATION

Present Law

Section 14 of Article IV of the Constitution of Virginia now states in part:

The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

The federal district court for the Western District of Virginia ruled in April 2002 that this provision of the Virginia Constitution is unconstitutional because it violates the federal constitutional right to the free exercise of religion. Falwell v. Miller, 203 F. Supp.2d 624 (W.D.Va. 2002). The court found that it is unconstitutional to deny a church the option to incorporate under state law when any other group can incorporate. It noted that the Virginia Commission on Constitutional Revision in its 1969 report had recognized that the prohibition was probably invalid.

Following the court's decision in 2002, the State Corporation Commission, which is charged with the duty of administering the corporate statutes of the Commonwealth, began routinely to grant certificates of incorporation to churches and religious denominations that filed for incorporation under Virginia law.

The 2004 General Assembly established a joint subcommittee to study issues related to the incorporation of churches and other appropriate matters. Senate Joint Resolution 89 (2004). In the executive summary for its report, the joint subcommittee recommended the repeal of the provision quoted above. Senate Document No. 9 (2005).

Proposed Amendment

The proposed amendment would delete the provision found to be unconstitutional. It would not change the current law on other powers of the General Assembly.

A "yes" vote on the proposed amendment will result in the deletion of the current paragraph in Section 14 of Article IV that prohibits the General Assembly from granting charters of incorporation to churches and religious denominations. A "no" vote will leave that paragraph in Section 14 of Article IV.

FULL TEXT OF AMENDMENT [Proposed new language is underlined. Existing language that is deleted is shown as stricken (~~stricken~~).]

Amend Section 14 of Article IV of the Constitution of Virginia as follows:

ARTICLE IV LEGISLATURE

Section 14. Powers of General Assembly; limitations.

The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly's power to define the accrual date for a civil action based on an intentional tort committed by a natural person against a person who, at the time of the intentional tort, was a minor shall include the power to provide for the retroactive application of a change in the accrual date. No natural person shall have a constitutionally protected property right to bar a cause of action based on intentional torts as described herein on the ground that a change in the accrual date for the action has been applied retroactively or that a statute of limitations or statute of repose has expired.

The General Assembly shall not enact any local, special, or private law in the following cases:

- (1) For the punishment of crime.
- (2) Providing a change of venue in civil or criminal cases.
- (3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.
- (4) Changing or locating county seats.
- (5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.
- (6) Extending the time for the assessment or collection of taxes.
- (7) Exempting property from taxation.
- (8) Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association to the Commonwealth or to any political subdivision thereof.
- (9) Refunding money lawfully paid into the treasury of the Commonwealth or the treasury of any political subdivision thereof.
- (10) Granting from the treasury of the Commonwealth, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.
- (11) For registering voters, conducting elections, or designating the places of voting.
- (12) Regulating labor, trade, mining, or manufacturing, or the rate of interest on money.
- (13) Granting any pension.
- (14) Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.
- (15) Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.

(16) Affecting or regulating fencing or the boundaries of land, or the running at large of stock.

(17) Creating private corporations, or amending, renewing, or extending the charters thereof.

(18) Granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(19) Naming or changing the name of any private corporation or association.

(20) Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

~~The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.~~

DLS

4/5/06

Explanation -- 307 words

Approved by House Committee on Privileges and Elections 5/10/06